



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Monadnock Regional School District

Complainant

v.

Monadnock District Education Association,
NEA/NH

Respondent

Case No. T-0287-8

Decision No.2005-030

Monadnock District Education Association,
NEA/NH

Complainant

v.

Monadnock Regional School District

Respondent

Case No. T-0287-9

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Monadnock Regional School District (hereinafter "the District") filed an improper practice charge on January 19, 2005 alleging that the Monadnock District Education Association, NEA-NH (hereinafter "the Association") violated RSA 273-A:5, II (f) by attempting to arbitrate a grievance that is not arbitrable under the parties' collective bargaining agreement ("CBA"). The District states that on or about June 17, 2004, the Association filed a grievance on behalf of two teachers, Jean Girard and Nancy Lines. The teachers grieved the denial by the Superintendent of their request for reimbursement of staff development funds for travel. The District alleges that the Superintendent subsequently advised them in a response dated July 23, 2004 that their issue was not grievable because the discretion for approval of such reimbursement was within his sole discretion. According to the District, the Association then referred the grievance to the Monadnock School Board on August 31, 2004, which thereafter also advised the Association, by letter dated September 14, 2004, that the issue was not grievable. It was not until January 6, 2005, as alleged by the District, that the Association filed a Demand for Arbitration with the American Arbitration Association ("AAA").

Based upon the foregoing, the District contends, among other things, that the grievance is not substantively arbitrable because, pursuant to Articles 6.8 and 11.11 of the CBA, the decision

with regard to reimbursement of staff development funds for travel is within the sole discretion of the Superintendent. Additionally, the District claims that the grievance is not procedurally arbitrable because it is barred by the ten (10) day filing requirement for arbitration under Article X of the CBA. As remedies, the District requests that the PELRB (1) issue an *ex parte* cease and desist order prohibiting the arbitration of the Association's grievance pending the PELRB's determination of arbitrability, (2) find that the grievance is not arbitrable, (3) find that the Association has breached the CBA and therefore committed an unfair labor practice in violation of RSA 273-A:5, II (f), and (4) award the District its' attorney's fees and costs incurred in this matter.

On February 2, 2005, the Association filed its' answer denying the District's complaint, as well as counter-charges against the District. In its answer, the Association generally admits to the chronology of events as described by the District, but it denies that it has committed any unfair labor practice. The Association submits that the District has misconstrued the nature of the grievance, pointing out that there is not a contractual requirement for reimbursement for travel related to staff development. Instead, as described by the Association, reimbursement is to be given up to \$750 for "expenses incurred in meeting District Staff Development requirements as per the SAU 38 Staff Development Master Plan." The Association further indicates that the grievance also raises the issue of the type of leave against which the time is to be charged. The Association specifically denies that the management rights language under Article 2.1 of the CBA applies in the instant case, stating that the District has bargained over the language at issue and that these matters are not exclusively vested in the District. As to the issue of procedural timeliness, the Association maintains that, if anything, the grievance was filed early, since the travel has not yet taken place. It also notes that in its' letter of October 4, 2004, it stated, "it is our intent to go to arbitration." Since language on grievance time limits, leave and staff development are all contained in the CBA, the Association asserts that the dispute falls within the scope of arbitrator review. Among other things, the Association asks that the PELRB dismiss the District's charge, including its' request for an *ex parte* order, and find that the Association's grievance is arbitrable.

In its complaint against the District, the Association alleges violations of RSA 273-A:5 I (a), (c), (h) and (i) as a result of the District's refusal to provide staff development funds for travel that are related to the grievants' staff development requirements under Article VI of the CBA. The Association also claims that the District has breached the parties' CBA by stating that the grievance is not arbitrable and refusing to proceed to arbitration in violation of Article X, Section 5. Accordingly, the Association requests that the PELRB (1) find that the District breached the CBA, (2) sustain the Association's grievance and make the grievants whole for any and all losses suffered, (3) order the District to pay all costs related to this charge, and (4) require the District to obey any fair and lawful order under the statute.

On February 7, 2005, the District renewed its request for the PELRB's issuance of an *ex parte* cease and desist order, based in part upon the Association's letter to the AAA, dated February 2, 2005, requesting that it continue to follow its procedures with regard to the arbitration. The District denied the Association's unfair labor practice complaint in its' answer filed with the PELRB on February 17, 2005 and also filed a Motion to Dismiss Counterclaim on that date. The District avers that the Association's complaint was filed more than six (6) months since the date of the alleged violation and therefore it must be dismissed pursuant to RSA 273-A:6 and Pub 201.02. It also maintains, again, that the Association's grievance is not arbitrable. As a result, the District requests that the Association's complaint be dismissed and that the PELRB grant the relief sought by the District in PELRB Case No. T-0287-8.

On February 17, 2005, the undersigned hearing officer conducted a telephone conference call with the parties' representatives relative to the District's pending Request for Issuance of *Ex Parte* Cease and Desist Order. The District's request was not resolved but it was noted at that time that a pre-hearing conference was scheduled to convene shortly.

A pre-hearing conference was conducted at PELRB offices, Concord, New Hampshire on March 2, 2005 before the undersigned hearing officer.

PARTICIPATING REPRESENTATIVES

For the District: Thomas Barry, Esq. for Margaret Ann Moran, Esq.

For the Association: Mary E. Gaul, UniServ Director

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether the Association committed an unfair labor practice in violation of RSA 273-A:5, II (f) by filing a Demand for Arbitration beyond the ten (10) day limitation period contained in Article X (Grievance Procedure) of the parties' CBA. (Procedural Arbitrability). If so, what shall be the remedy?
- (2) Whether the Association committed an unfair labor practice in violation of RSA 273-A:5, II (f) by filing a Demand for Arbitration on grievances (re: denial of reimbursement of staff development funds) that concern decisions within the sole discretion of the Superintendent and otherwise constitute a management right within the exclusive prerogative of the District. (Substantive Arbitrability). If so, what shall be the remedy?
- (3) Does the Association's complaint relative to the District's denial of reimbursement of staff development funds violate the six (6) month statute of limitations set forth in RSA 273-A:6, VII?
- (4) Whether the District committed an unfair labor practice in violation of 273-A:5 I (a), (c), (h) and/or (i) when it denied the complainant's their request for reimbursement of staff development funds for travel. If so, what shall be the remedy?
- (5) Whether the District committed an unfair labor practice when it denied the complainants' grievance, stating that it was not arbitrable, and refused to proceed to arbitration. If so, what shall be the remedy?

WITNESSES

For the District:

1. Superintendent Curtis Cardine
2. Dr. Kenneth Dassau
3. Dr. Robin Marra, Chairman, Monadnock Regional School Board
4. Dr. David G. Hodgdon

For the Association:

1. Cheryl Kahn, Association President
2. Superintendent Curtis Cardine
3. Nancy Lines, grievant
4. Jean Girard, grievant
5. Mary Gaul, UniServe Director

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party.

EXHIBITS

During the course of the pre-hearing conference, the parties stipulated to submitting the following documents as joint exhibits and sufficient copies of same were furnished to the PELRB:

1. 2003 – 2006 Collective Bargaining Agreement.
2. June 17, 2004 Grievance Letter.
3. July 23, 2004 Level B response.
4. August 31, 2004 letter – Kahn to Marra.
5. September 14, 2004 – Moran to Gaul.
6. October 4, 2004 letter – Gaul to Marra.
7. November 29, 2004 letter – Gaul to Marra.
8. December 20, 2004 letter – Moran to Gaul.
9. January 4, 2005 letter – Association's Demand for Arbitration.
10. January 18, 2005 letter – Moran to AAA.
11. January 27, 2005 letter – AAA to Moran/Gaul.
12. February 2, 2005 letter – Gaul to AAA.
13. February 11, 2005 letter – AAA to Moran/Gaul.
14. February 24, 2005 letter – AAA to Moran/Gaul.
15. Staff Development Master Plan – 2001-2006
16. Nancy Lines, Leave Request Form dated December 22, 2004
17. Jean Girard, Leave Request Form dated December 22, 2004

For the District:

1. Monadnock Regional School District Educator Supervision and Evaluation Process and Policy. (Pre-marked for identification)
2. September 14, 2004 E-mail – Moran to Gaul.
3. Girard Professional Growth Plan, dated May 28, 2004. (Pre-marked for identification).
4. Lines Professional Growth Plan, dated May 28, 2004. (Pre-marked for identification).

For the Association:

1. None other than those listed above as "joint."

The parties' representatives will attempt to reach agreement on additional joint exhibits in advance of the Board hearing. Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is three (3) hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least five (5) days prior to the date of the evidentiary hearing.

DECISION

1. PELRB Case Nos. T-0287-8 and T-0287-9 are hereby consolidated.
2. The parties stipulate to the Board's jurisdiction over the respective complaints.
3. At the outset of the pre-hearing conference, the PELRB hearing officer discussed with the parties' representatives the pending "Request for Issuance of *Ex Parte* Cease and Desist Order" filed by the District. Counsel for the District indicated that despite the District's objections to AAA's jurisdiction, it was now faced with having to choose an arbitrator by March 3, 2005 in the underlying arbitration case (AAA Case No. 11 390 00051 05) that is the subject of its' instant unfair labor practice complaint before the Board. Following said discussion, the parties were able to reach an agreement on extending the due date for the parties' selection of an arbitrator to the date of the Board Hearing. Accordingly, the Association's representative is directed to notify the American Arbitration Association in writing by March 3, 2005 of the parties' agreement to extend the period for selection of an arbitrator to March 17, 2005. If necessary, the issues raised by the District as to the continued processing of the AAA arbitration case, including the District's selection of an arbitrator, may be addressed with the PELRB at that time.
4. The parties' representatives signed a joint statement of facts consisting of fourteen (14) separate stipulations at the conclusion of the pre-hearing conference. The District shall prepare a final draft of said joint statement of facts, to be signed by the parties, in advance of the Board hearing. In the event that the parties are successful in reaching additional stipulations of fact, the parties' representatives shall memorialize those facts and file that document with the PELRB at least five (5) days prior to the date of the hearing.
5. The Association has expressed the possibility that it may call Mary Gaul as a witness in this matter. As the PELRB generally does not accept narrative testimony from a party advocate, the Association is directed to identify for the PELRB and the District who will conduct such questioning of Ms. Gaul, in the event that she is called as a witness, and to do so at least five (5) days prior to the date of the Board hearing.

6. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any additional exhibits for identification, *other than those listed above*, prior to the time of hearing and shall have sufficient copies available for distribution at the hearing as required by Pub 203.02.
7. Unless otherwise ordered as a result of the filing of any subsequent motion, or for other good cause shown, an evidentiary hearing between the parties will be held on:

Thursday March 17, 2005 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 7th day of March, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Mary E. Gaul, UniServ Director
Margaret-Ann Moran, Esq.